

FILE

Law Department

UNION PACIFIC RAILROAD COMPANY



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October 19, 1998

**OVERNIGHT**

Thomas Swegle  
Department of Justice  
Environmental and Natural Resources Division  
1425 New York Avenue, N.W.  
Washington, D.C. 20005

Re: Wallace Branch - Natural Resource Damage Negotiations

**CONFIDENTIAL - SETTLEMENT COMMUNICATION**

Dear Tom:

This is in response to your request that Union Pacific provide the Department of Justice with an estimate of the costs reflected in Union Pacific's most recent offer of settlement.

The attachment to this letter identifies the elements of work incorporated in Union Pacific's offer, the estimated costs for each element, and the total settlement proposal. The identified costs include those associated with the implementation of the response action, the construction of the trail, amenities, as well as the removals associated with the proposed response actions, including removal of visually identifiable ballast within the Reservation, as reflected in the most recent amended good faith offer. The costs also include both the direct payments to the trail operator for operation and maintenance and to provide the necessary institutional controls, as well as costs that may be incurred by Union Pacific to address catastrophic flood events over the next 30 years. Also included is the estimated cost to provide resurfacing of the asphalt portion of the trail once during the first twenty (20) years of its operation. It should be noted that the figure provided for catastrophic flood damage is taken from the State's and Tribe's previous estimate and may be based on factors that may have inflated the estimate. In addition, the offer includes an amount of \$1.75 million as settlement for all alleged natural resource damages.

This estimate is based on the studies that have been conducted to date by McCulley, Frick and Gilman, as well as response costs incurred in connection with implementation of the Consent Decree remediation within the Bunker Hill Superfund Site, but are not, obviously, based on any specific bids that have been made for any elements of the work. In addition, our estimated costs assumes that essentially all of the tailings or other contaminated materials removed in connection with the salvage operation and the response action will be disposed of in the Central Impoundment Area and that Union Pacific will not incur any disposal or tipping fees in that connection. The estimated cost also includes the value of the right of way being conveyed to the ultimate trail owner and operator. We view this as a necessary element of cost since Union Pacific will be required to transfer the right of way in order that a Certificate of Interim Trail Use be issued by the Surface Transportation Board. As you know, without such Certificate, the integrity of the right of way cannot be maintained.

Based on these factors and assumptions, Union Pacific estimates the value of the amended good faith offer at approximately \$27.6 million. This amount does not include anticipated cost of the rail line salvage, i.e., the removal of the ties and rail from the right of way since it is anticipated that the salvage value of that material should equal the cost of removal. If, however, that cost is included in the value of the response action and amended good faith offer, the value is increased. In addition, no estimates are included for Trustee or EPA past or oversight costs or anticipated costs in connection with potential response actions on the Canyon Creek branch line or in the former NP Wallace Yard.

This information is being provided solely for use of the Department of Justice in its evaluation of Union Pacific's amended good faith offer. This information is confidential and is not to be disclosed to any persons other than to those required to have access to such information and is being submitted with the understanding that no disclosure outside of the departments or agencies represented by the Department of Justice will be made without the consent of Union Pacific.

Very truly yours,



Thomas E. Greenland  
Environmental Counsel  
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Attachment

TEG:sla

## Attachment A - Cost Estimate - Union Pacific's Amended Good Faith Offer

### Estimated Cost

#### Response Action and Trail Construction

Removals	
Excavation	\$ 608,000
Demolition	\$ 178,000
Hauling to CIA	\$ 3,200,000
Disposal in CIA	<u>\$ 345,000</u>
	<u>\$ 4,331,000</u>
Barriers	\$ 9,737,000
Existing Flood Damage Repair	\$ 894,000
Miscellaneous Components including Bridges Trail Extension to Plummer Morning Mine Rock Dump Stabilization Waste Rock, Flume and Culvert at MM5	\$ 1,111,000
Trail Amenities	
Upgrade of Existing Community Facilities	\$ 100,000
Tables 1 & 2 of 8/14 Offer	\$ 531,000
O&M	
Cash from UPRR	\$ 2,000,000
ISTEA Funding	\$ 1,000,000
Catastrophic Flood Damage*	\$ 4,890,000
Trail Resurfacing	\$ 1,200,000
Donation of ROW	\$ 1,080,000
NRD Settlement	<u>\$ 1,750,000</u>
	<u>\$28,624,000</u>
Less ISTEA Funding	\$(1,000,000)
	<u>\$27,624,000</u>

\*Estimate from State's/Tribe's proposal.